

# Fitchburg Gas and Electric Light Company (“FG&E”)

## Default Service Request for Proposals

### Service Periods:

Small Customer Group (50%): June 1, 2006 – May 31, 2007

Medium Customer Group (50%): June 1, 2006 – May 31, 2007

Large Customer Group (100%): June 1, 2006 – August 31, 2006

Issued: March 16, 2006

# Fitchburg Gas and Electric Light Company (“FG&E”)

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**Request for Proposals  
To Provide  
Default Service  
To Customers of  
Fitchburg Gas and Electric Light Company**

**I. Introduction**

The Massachusetts Electric Industry Restructuring Act of 1997 (“Massachusetts Act”) provided for competition in the electric utility industry by extending competition in the wholesale power supply markets to retail customers through the provision of retail access to all customers. The Massachusetts Act provided access for all retail customers of Fitchburg Gas and Electric Light Company (“FG&E”) as of March 1, 1998. The Massachusetts Act requires each distribution company to provide default service to those customers who are not receiving generation service from a competitive supplier (“Default Service”). Although this RFP uses the term Default Service, for retail purposes, the supply service sought herein is now referred to as Basic Service<sup>1</sup>.

The Massachusetts Act requires Default Service to be competitively procured. In addition, the Massachusetts Department of Telecommunications and Energy (“MDTE”) has conducted a number of proceedings on rules and procedures for the provision and pricing of Default Service. MDTE has ordered all electric companies in Massachusetts to procure Default Service through competitive solicitations by customer group and to procure such power at fixed monthly prices<sup>2</sup>. MDTE has also required electric companies to procure separately for three customer groups. For purposes of Default Service procurement, FG&E has defined a “Small Customer Group”, a “Medium Customer Group” and a “Large Customer Group”, each comprised of various rate classes of customers as defined below.

MDTE also implemented rules and procedures for the provision and pricing of Default Service in which it clarified procurement rules with regard to Standard Market Design (“SMD”) and established procurement schedules<sup>3</sup>. Since FG&E’s customers are located in a single SMD load zone, the SMD clarification does not impact this RFP. With regard to procurement schedules, MDTE ordered electric companies to procure power for their residential and small C&I customers on a staggered basis whereby fifty percent of Default Service supply is procured every six months for a twelve-month period. The MDTE also ordered electric companies to procure power for their medium and large C&I Default Service customers on a quarterly basis. FG&E purchases for its Small Customer Group and Medium Customer Group under the residential and small C&I customer schedule

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<sup>1</sup> See Docket D.T.E. 04-115-A.

<sup>2</sup> See Dockets D.T.E. 99-60-A and D.T.E. 99-60-B.

<sup>3</sup> See Dockets D.T.E. 02-40-A, D.T.E. 02-40-B and D.T.E. 02-40-C.

(50% for twelve months) and purchases for its Large Customer Group under the medium and large C&I schedule (100% quarterly).

FG&E has issued this RFP to solicit competing power supply offers to supply firm, load-following power to meet the requirements of its Default Service customer groups as follows. The winning supplier(s) chosen to serve FG&E's Small Customer Group and Medium Customer Group will provide 50% of the load requirements for the 12-month period of June 1, 2006 through May 31, 2007. The winning supplier chosen to serve FG&E's Large Customer Group will provide 100% of the Large Customer Group Default Service load for the 3-month period of June 1, 2006 through August 31, 2006.

FG&E will obtain Renewable Energy Certificates ("RECs") required for compliance with Renewable Portfolio Standard ("RPS") regulations under a separate process. As such, there are no requirements to provide RECs associated with the service sought herein.

This RFP provides background information and historical data, details the service requirements and commercial terms, and elaborates on the procedures to be employed by FG&E to select the winning suppliers. All materials for this RFP are available at the following website address: [www.unitil.com/rfp](http://www.unitil.com/rfp) under "Current Procurement" for FG&E. The RFP and its appendices, including the submission form and contract materials, are included as separate editable electronic files along with a number of data and Acrobat files. The contents of each file are described in this document. Please contact Richard MacInnis at (603) 773-6444 with any questions regarding these materials.

## **II. Description of Default Service**

FG&E is soliciting load-following power supply offers to meet the needs of its ultimate customers who are taking service under its Default Service tariff<sup>4</sup>. As described in the tariff, Default Service is provided to retail customers who are not taking service from a competitive supplier. Default Service can be initiated by: (a) a customer notifying FG&E that they wish to terminate service from their competitive supplier and commence Default Service; (b) a competitive supplier notifying FG&E that it is terminating service to a customer; (c) a competitive supplier ceasing to provide service to a customer without notifying FG&E; or (d) a customer moving into FG&E's service territory.

For the purpose of this solicitation, FG&E has established customer groups comprised of the customer rate classes shown in the following table. Bidding power suppliers ("Respondents") may submit bids to provide service to any or all customer groups. Bids to supply each customer group will be evaluated and awarded separately. The loads associated with the three customer groups are modeled in the NEPOOL market system as load asset 1737, 10693 and load asset 1095.

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<sup>4</sup> A copy of FG&E's current Default Service tariff, effective March 1, 2005, is attached as Appendix E, see file "App\_E\_DS\_Tariff\_2005-03.pdf".

<b>Customer Group</b>	<b>Load Asset #</b>	<b>Customer Rate Class</b>
Small Customer Group	1737	RD-1, RD-2, GD-1
Medium Customer Group	10693	GD-2, GD-4, GD-5 and SD
Large Customer Group	1095	GD-3

The amount of Default Service to be supplied by the winning bidder(s) will be determined in accordance with the retail load associated with those customers who from time to time rely on Default Service. FG&E cannot predict the number of customers that will rely on Default Service, how much load will be represented by these customers, or how long they will continue to take Default Service. FG&E expressly reserves the right to encourage customers to choose their own supplier from the competitive marketplace instead of taking Default Service.

#### Data Provided

To assist Respondents in determining the potential load requirements, a variety of data has been provided with this RFP. The provided data include the following.

Historic Hourly Loads are provided for FG&E's Small Customer Group, Medium Customer Group and Large Customer Group for the period January 1, 2003 through March 10, 2006. FG&E has separately provided both the Default Service loads and the competitively supplied loads so that Respondents can assess the Default Service requirements in terms of the overall requirements of a given Customer Group. The Default Service loads include historic load that was served as either Standard Offer Service or Default Service prior to March 1, 2005 (please see file "Hourly\_Loads\_2006-03.xls").

Historic Retail Monthly Sales data from DOER 110 reports filed by FG&E from April 1999 through February 2006 have been compiled and provided in Excel format. The DOER 110 report details by customer rate class the number of customers and monthly retail billed kWh sales delivered to customers receiving Standard Offer Service, Default Service and generation service from competitive retail suppliers. The data have been summarized by the current customer group definitions and charts have been added to show monthly sales by supply type for each customer group (please see file "DOER\_110\_Report\_2006-03.xls").

Class Average Load Shapes (8760 hours) are available on FG&E's website at <http://services.FG&E.com/fge/loadshapes.asp>.

Distribution System Loss Factors are as shown in the following table. Please note that the quantity of supply sought via this RFP includes distribution losses internal to FG&E's system and will be purchased by FG&E from the winning bidder(s). Distribution

losses are embedded in the historical data provided and should not be netted to determine supply requirements and billing determinants separately.

<b>Rate Class</b>	<b>Distribution Loss Factor</b>
RD-1, RD-2	7.52%
GD-1, GD-2, GD-4, GD-5	7.72%
GD-3	4.48%
SD	6.71%

Large Customer Concentration is demonstrated by a listing of the annual energy and demand requirements of FG&E's GD-3 customers for the 12 months ending February 2006. This listing indicates the current supply type (Default Service or competitive generation) and next meter read date for each customer (please see file "Large\_Customer\_Summary\_2006-03.xls").

Evaluation Loads that FG&E will use to calculate weighted average prices of bids received from Respondents for the purpose of comparing competing bids on the basis of price are provided. These estimated loads may be instructive to Respondents, but should in no way be construed to represent any contract quantity or billing determinant or to create any obligation to any party (please see file "Evaluation\_Loads\_2006-03.xls").

### **III. General Provisions**

#### Terms and Conditions

FG&E will separately award each of the following two Default Service loads to one winning bidder: add small

- (1) Small Customer Group – 50% of service requirements from June 1, 2006 through May 31, 2007.
- (2) Medium Customer Group – 50% of service requirements from June 1, 2006 through May 31, 2007.
- (3) Large Customer Group – 100% of service requirements from June 1, 2006 through August 31, 2006.

### Power Supply Contract

Respondents who have previously finalized contract language (including EEI Master Agreements and stand alone contracts) with FG&E for the provision of Default Service supply may use a prior contract as a basis for establishing contractual terms and conditions for the service sought via this RFP. Respondents who either do not have a prior contract or do not wish to use a prior contract, must execute the Power Supply Agreement in Appendix B (please see file named “App\_B\_Power\_Agreement\_2006-03.doc”. Respondents may submit contract comments along with their indicative bids. FG&E will review and negotiate contract changes in good faith, but any contract changes must be mutually agreed prior to final bidding. Winning bidders will be required to execute a contract acceptable to FG&E within two (2) business days of being notified they were selected as the winner.

The obligations of FG&E and the winning bidders are subject to and conditioned upon MDTE approval of the retail rates derived from the transaction sought in this solicitation. FG&E will use its best efforts to obtain MDTE’s approval.

### Proposal Process and Submission Dates

The following table outlines key dates associated with this procurement process.

Item	Date
RFP Issued	Thur, 3/16/06
Proposal Submission Forms Due (including proposed contract changes and indicative pricing)	Tue, 4/11/06 – 3pm EPT
Final Pricing Due	Tue, 4/18/06 – 10am EPT
Winning Suppliers Notified	Tue, 4/18/06 – 1pm EPT
Contracts Executed	Thu, 4/20/06
FG&E files for MDTE Approval of Rates	Fri, 4/21/06
Service Commences	Wed, 6/1/06

Respondents to this RFP for Default Service must submit a completed Proposal Submission Form, including any proposed contract modifications, along with indicative pricing and then final pricing according to the schedule shown above. All submissions should be marked “FG&E Default Service” and sent via e-mail to Richard MacInnis ([Macinnis@unitil.com](mailto:Macinnis@unitil.com)). Please direct any questions to Richard MacInnis at (603) 773-6444.

Proposal Submission Forms are attached as Appendix A (please see file named “App\_A\_Submission\_Form\_2006-03.doc”). Forms and proposed contract changes are due by **3:00 p.m. EPT on April 11, 2006.**

Indicative Pricing is due with the Proposal Submission Form and may be submitted on either the “Indicative Pricing” page provided with the Proposal Submission Form document or the “Evaluation Loads” spreadsheet. In either case, Respondent’s name and “Indicative Pricing” must be clearly stated and the notes on the “Indicative Pricing” sheet are assumed to be conveyed. Pricing must meet the requirements described in the Proposed Pricing portion of Section V, and must reflect the provision of power supply services as described in the Form of Service portion of Section IV. Indicative pricing is due **3:00 p.m. EPT on April 11, 2006.**

Final Pricing may be submitted on either the “Final Pricing” page provided with the Proposal Submission Form document or the “Evaluation Loads” spreadsheet. In either case, Respondent’s name and “Final Pricing” must be clearly marked and the notes on the “Final Pricing” sheet are assumed to be conveyed. Final pricing is due by **10:00 a.m. EPT on April 18, 2006.**

Winners Notified. FG&E intends to confirm final pricing, evaluate competing bids, and select and notify the winning bidders by **1:00 p.m. EPT on April 18, 2006.**

FG&E, at its sole discretion, reserves the right to issue additional instructions or requests for additional information, to extend the due date, to modify any provision in the RFP or any appendix hereto or to withdraw the RFP.

#### Contact Person and Questions

Questions regarding this RFP should be submitted to Richard MacInnis at (603) 773-6444 or at [macinnis@unitil.com](mailto:macinnis@unitil.com).

#### Right to Select Supplier

FG&E shall have the exclusive right to select or reject any and/or all of the proposals submitted at any time, for any reason and to disregard any submission not prepared according to the requirements contained in this RFP.

#### Customer Billing and Customer Service

The Default Service power supply procured under this RFP will be a wholesale supply. As such, the winning suppliers will have no retail customer contact in any form. All customers taking Default Service will be retail customers of FG&E. As the retail provider of such service, FG&E will provide billing and customer service to customers receiving Default Service. In addition, FG&E will assume responsibility for the ultimate collection of moneys owed by customers in accordance with rules and regulations approved by the MDTE.

#### **IV. Service Features**

##### **Supply Obligation Periods**

For the Small Customer Group, 50% of the service requirements for the period beginning 0001 hours on June 1, 2006 through 2400 hours on May 31, 2007.

For the Medium Customer Group, 50% of the service requirements for the period beginning 0001 hours on June 1, 2006 through 2400 hours on May 31, 2007.

For the Large Customer Group, 100% of the service requirements will be awarded for the period that begins 0001 hours on June 1, 2006 and ends at 2400 hours on August 31, 2006.

##### **Delivery Point**

Currently, the load obligation associated with the load assets is settled at the West Central Massachusetts Load Zone. In the event that NEPOOL implements nodal settlement of load obligations, supplier will be responsible for all relevant charges at the node where the load assets are settled. The load physically exists and is metered at the Flag Pond substation.

##### **Form of Service**

The winning supplier(s) shall provide firm, load-following power for delivery to ultimate customers taking service under FG&E's Default Service tariff (see Appendix C). The obligations and responsibilities associated with providing Default Service shall be transferred to the winning supplier via an Ownership Share for Load Asset, utilizing the NEPOOL Asset Registration Process for the load assets associated with the customer groups. The quantity of service that suppliers will be responsible to deliver, and that FG&E will be responsible to purchase, includes the local distribution losses associated with delivery of electricity from the delivery point to the customers' meters, as described in the Data Provided portion of Section II.

Supplier shall be responsible for providing and paying for all energy and capacity services and for all ancillary services allocated to the Electrical Load (as defined in the RNA), associated with the load assets, as required by NEPOOL rules and/or the ISO New England, Inc. ("ISO") rules or their successors. FG&E shall be responsible for providing and paying for the transmission of the power across NEPOOL PTF and for all ancillary services allocated to the Network Load (as defined in the NEPOOL OATT), associated with the load assets. The specific requirements regarding the provision of energy, capacity and ancillary services by the supplier, and regarding the provision of transmission service by FG&E are detailed in the Power Supply Agreement in Appendix B (Section 4.2).

FG&E will report Default Service loads associated with load asset 1737 (Small Customer Group), load asset 10693 (Medium Customer Group) and load asset 1095 (Large Customer Group) to ISO-NE on a daily basis in accordance with the reporting practices in

New England. The load reported for Default Service customers will incorporate appropriate load allocation and estimation techniques and available meter readings for customers receiving Default Service from FG&E. Month end adjustments, based on customer meter readings, will be made to loads approximately 45 days after each month. Such adjustments will be priced at the contract price in effect for the month the load was served.

#### Renewable Energy Portfolio Standards

The Massachusetts Act required the Division of Energy Resources (“DOER”) to establish a Renewable Energy Portfolio Standard (“RPS”) for all retail electricity suppliers selling electricity to end-use consumers in Massachusetts. Implementation of the RPS began on January 1, 2003 and requires FG&E to demonstrate compliance with RPS regulations. FG&E intends to acquire Renewable Energy Certificates (“RECs”) under a separate process and therefore the service sought via this RFP does not include the provision of RECs for RPS compliance. However, the winning suppliers will be required to transfer the certificates obligation associated with the Default Service load it serves to FG&E’s NEPOOL GIS account so that FG&E can demonstrate compliance with RPS regulations.

### **V. Proposal Requirements**

#### Requested Information

Respondents to this RFP must provide the information identified in the Proposal Submission Form attached as Appendix A (please see “App\_A\_Submission\_Form\_2006-03.doc”). Respondents are asked to complete the submission form and return it to Richard MacInnis as indicated in Section III. Proposals should contain explanatory, descriptive and/or supporting materials as necessary.

Respondents will find that FG&E requests on its Proposal Submission Form that bidders indicate whether they will extend sufficient financial credit to FG&E to facilitate the transactions sought. FG&E has included with this RFP a copy of its most recent financials (see “FG&E Financials\_2006-03.zip”). FG&E has proposed security terms in the Power Supply Agreement, Appendix B (Section 7.3). Respondents are asked to indicate the financial security requirements they propose, along with any proposed contract modifications they propose. Proposed contract language is requested in a reviewable and editable fashion, such as the revision marking features of Microsoft Word. Respondents are also asked to indicate whether they agree that the resulting contract is subject to MDTE approval of supporting retail rates as sought by FG&E.

FG&E will treat all information received from Respondents in a confidential manner and will not, except as required by law or regulatory authority, disclose such information to any third party or use such information for any purpose other than to evaluate the Respondent’s ability to provide the services sought in this RFP.

### Proposed Pricing

Respondents must specify the prices, in ¢/kWh, at which they will provide Default Service for each customer group they are bidding to serve. Proposed prices may vary by calendar month and by customer group, but must be uniform for the entire calendar month and must cover the entire supply obligation period sought for each customer group the Respondent is bidding to serve. Purchases will be made on an “as-delivered” energy basis with prices stated on a fixed ¢/kWh basis for all kWh reported to the ISO for Load Assets 1737 (Small Customer Group), 10693 (Medium Customer Group) or Load Asset 1095 (Large Customer Group). No maximum price is specified; however the resulting retail rates are subject to the review and acceptance of the MDTE.

Due to uncertainty surrounding the New England capacity market, FG&E will require respondents to provide fixed monthly price bids under two capacity pricing scenarios for all supply periods beginning in October 2006. Under one scenario, respondents must include the cost of providing capacity as part of their fixed-price monthly bids. Under the other scenario, respondents must exclude the cost of providing capacity as part of their fixed-price monthly bids. In either case, the winning supplier(s) will be responsible for the provision of all capacity products. Respondents will find that the indicative pricing and final pricing bid sheets contained in the Proposal Submission Form have spaces for pricing under each scenario. If FG&E contracts for supply under the scenario that excludes the cost of providing capacity as part of fixed monthly prices, the supplier will be compensated for the provision of capacity requirements on a cost pass through basis as provided for in Section 5.1 of the proposed Power Supply Agreement. In the event that certainty regarding the capacity market is established, even if during the term of the Power Supply Agreement, FG&E will entertain subsequent negotiations with the supplier to fix the cost of capacity for the remaining term.

Proposals that contain time of use pricing, other forms of variable pricing, quantity restrictions, demand charges, or other fixed charges will be rejected.

### Bidder Requirements

In order to secure reliable, low cost Default Service for its customers, FG&E wishes to include all qualified power suppliers interested in this solicitation.

Bidders must have access to the NEPOOL settlement process for the entire term of the sale, either as a Participant in NEPOOL or via arrangements with a Participant to utilize their settlement process.

Respondents must establish complete contract language, including financial security arrangements, with FG&E prior to submission of final pricing.

## **VI. Evaluation Criteria**

The principal criteria to be used in evaluating proposals will include, but may not be limited to:

- Lowest evaluated bid price over the supply obligation period;
- Financial and operational viability of the power supplier, including the establishment of mutually acceptable financial security arrangements; and
- Responsiveness to non-price requirements including the reasonable extension of financial credit to FG&E and agreement that the proposed transaction is subject to MDTE approval of retail rates as sought by FG&E to cover the cost of the transaction.

Respondent pricing will be evaluated by weighting the fixed monthly pricing according to the Evaluation Loads for each customer group provided in the file named "Evaluation\_Loads\_2006-03.xls" as described at the end of Section II.

## **Appendix A:        Proposal Submission Form**

See file named “App\_A\_Submission\_Form\_2006-03.doc”

RESPONDENT: \_\_\_\_\_

FG&E Default Service RFP  
Proposal Submission Form  
Due Tue, April 11, 2006

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**APPENDIX A: PROPOSAL SUBMISSION FORM**

RESPONDENT: \_\_\_\_\_

FG&E Default Service RFP  
Proposal Submission Form  
Due Tue, April 11, 2006

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## 1. General Information

Name of Respondent	
Name of Parent or Guarantor (if any)	
Principal contact person - Name - Title - Company - Mailing address - Telephone number - Fax number - E-mail address	
Secondary contact person (if any) - Name - Title - Company - Mailing address - Telephone number - Fax number - E-mail address	
Legal status of Respondent (e.g., sole proprietorship, partnership, limited partnership, joint venture, or corporation)	
State of incorporation, residency or organization	
The names of all general and limited partners (if Respondent is a partnership)	

RESPONDENT: \_\_\_\_\_

FG&E Default Service RFP  
Proposal Submission Form  
Due Tue, April 11, 2006

Description of Respondent and all relevant affiliated entities and joint ventures	

## 2. Financial Information

<i>Please provide the following for Respondent and/or Parent/Guarantor (as appropriate)</i>	Respondent	Parent/Guarantor
Current debt ratings, including names of rating agencies and dates of ratings. If entity is not rated, please indicate.		
Date last fiscal year ended.		
Total revenue for the most recent fiscal year.		
Total net income for the most recent fiscal year.		
Total assets as of the close of the previous fiscal year.		
DUNS Number and Federal Tax ID.		
Please provide a copy of the most recent financials including balance sheet, income statement and cash flow statement.		

RESPONDENT: \_\_\_\_\_

### 3. Defaults and Adverse Situations

<p>Describe, in detail, any situation in which Respondent (either alone or as part of a joint venture), or an affiliate of Respondent, defaulted or was deemed to be in noncompliance of its contractual obligations to deliver energy and/or capacity at wholesale within the past five years.</p> <p>Explain the situation, its outcome and all other relevant facts associated with the event described.</p> <p>Please also identify the name, title and telephone number of the principal manager of the customer/client who asserted the event of default or noncompliance.</p>	
<p>Describe any facts presently known to Respondent that might adversely affect its ability to provide the service bid herein as provided for in the Request for Proposals.</p>	

### 4. NEPOOL and Power Supply Experience

<p>Is Respondent a member of NEPOOL?</p>	
<p>Please list Respondent's NEPOOL Participant ID.</p>	
<p>If Respondent is NOT a NEPOOL member, list the name and Participant ID of the NEPOOL member who will carry Respondent's obligations in its settlement account. Please provide a supporting statement and contact information from such member.</p>	

RESPONDENT: \_\_\_\_\_

FG&E Default Service RFP  
Proposal Submission Form  
Due Tue, April 11, 2006

Please describe Respondent's experience and record of performance in the areas of power marketing, brokering, sales, and/or contracting, for the last five years within NEPOOL and/or the New England region.	
Please provide three references (name, title and contact information) who have contracted with the Respondent for load-following services or who can attest to Respondent's ability in the areas of power supply portfolio management within the past 2 years.	

## 5. Non Price Terms

Does Respondent extend sufficient financial credit to FG&E to facilitate the transactions sought via this RFP?	YES or NO
Please indicate what, if any, financial security requirements Respondent has of FG&E in order to secure the extension of credit. Please attach any proposed contractual language.	
Does Respondent agree that the obligations of both parties are subject to and conditioned upon the MDTE's approval of the FG&E retail rates derived from the transaction sought in this solicitation?	YES or NO

RESPONDENT: \_\_\_\_\_

FG&E Default Service RFP  
Proposal Submission Form  
Due Tue, April 11, 2006

Please list all regulatory approvals required before service can commence.	
Is Respondent willing to enter into contractual terms substantially as proposed in the Power Supply Agreement contained in Appendix B?	YES or NO
<p>Please indicate contractual preference:</p> <p>(A) Respondent has previously contracted with FG&amp;E to provide Default Service and prefers to <u>use a prior contract</u> or existing EEI Master Agreement and transaction confirmation as the basis for establishing contract terms for this transaction.</p> <p>(B) Respondent prefers to execute a power supply contract substantially similar to the <u>Power Supply Agreement</u> contained in Appendix B.</p>	<p>(A) PRIOR CONTRACT</p> <p>or</p> <p>(B) POWER SUPPLY AGREEMENT, App B</p>
<p>If Respondent prefers to execute the Power Supply Agreement in Appendix B, please provide any proposed modifications.</p> <p>Please briefly list issues here and provide proposed changes to the language in the document in revision marking as appropriate.</p>	

RESPONDENT: \_\_\_\_\_

FG&E Default Service RFP  
Proposal Submission Form  
Due Tue, April 11, 2006

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## **6. FG&E INDICATIVE & FINAL PRICING**

Please use the separate bid form provided along with the RFP materials, in the file named "Bid\_Form\_2006\_03.xls, to submit your indicative and final pricing.

- Bid prices will be compared with competing bids from other respondents in terms of price using the Evaluation Loads provided in the Bid Form (see Bid\_Form\_2006\_03.xls).
- The pricing submitted here is subject to the terms of the Request for Proposals issued on March 16, 2006.
- A single winning bidder will be chosen to supply the entire period for each transaction (Small Medium & Large customer groups).
- Bids containing time of use pricing, other forms of variable pricing, quantity restrictions, demand charges, or other fixed charges will not be accepted.
- Local distribution losses from the delivery points to customers' meters are included in the quantity of service and should not be priced separately.
- The pricing should not reflect the provision of Renewable Energy Credits (RECs) needed to comply with the Renewable Portfolio Standards (RPS) established in Massachusetts.

**Appendix B:       Default Service Power Supply Agreement**

See file named “App\_B\_Power\_Contract\_2006-03.doc”

## POWER SUPPLY AGREEMENT

This POWER SUPPLY AGREEMENT (“Agreement”) is dated as of [date] and is by and between FITCHBURG GAS AND ELECTRIC LIGHT COMPANY (“FG&E” or “Buyer”), a Massachusetts corporation, and [Company] (“Seller”), a [what]. This Agreement provides for the sale by Seller of Default Service, as defined herein, to the Buyer. The Buyer and Seller are referred to herein individually as a “Party” and collectively as the “Parties”.

### ARTICLE 1. BASIC UNDERSTANDINGS

Seller, in response to a Request for Proposals issued on March 16, 2006 by the Buyer, has been selected to be the supplier of firm, load-following power to meet the Buyer’s Service Requirements as defined in the Service Requirements Matrix found in Appendix A. This Agreement sets forth the terms under which Seller will supply Default Service to the Buyer during the Delivery Term.

### ARTICLE 2. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified in this Article. In addition, except as otherwise expressly provided, terms with initial capitalization used in this Agreement and not defined herein shall have the meaning as defined in the ISO Rules.

**Affiliate** means, with respect to any Party, any person (other than an individual) that, directly or indirectly, controls, or is controlled by such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**Business Day** means a 24-hour period ending at 5:00 p.m. EPT, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Boston, Massachusetts are authorized by law or other governmental action to close.

**Buyer** means Fitchburg Gas and Electric Light Company its successors, assigns, employees, agents and authorized representatives.

**Buyer’s System** means the electrical transmission and distribution system of the Buyer.

**Buyer’s Service Territory** means the geographic area served by Fitchburg Gas and Electric Light Company.

**Commencement Date** means, with respect to a Service Requirement the period at HE 0100 EPT on the date set forth for the Service Requirement on Schedule 1 of Appendix A.

**Commission** means the Federal Energy Regulatory Commission.

**Competitive Supplier Terms** means the Terms and Conditions for Competitive Suppliers, which

are a part of the Retail Delivery Tariff, as may be amended from time to time.

**Contract Rate** means the value as set forth in Appendix B as applicable to each Service Requirement, during a month in the Delivery Term.

**Conclusion Date** means the end of the HE 2400 EPT on the date set forth for the Service Requirement on Schedule 2 of Appendix A.

**Credit Rating** means (i) the lower of the ratings assigned to an entity's unsecured, senior long term debt obligations (not supported by third party credit enhancements) by S&P and Moody's, (ii) in the event the entity does not have a rating for its senior unsecured longterm debt, the lower of the rating assigned to the entity as an issuer rating by S&P and Moody's, or the rating assigned to the entity as an issuer rating by any other rating agency agreed to by both Parties in each Party's sole and exclusive judgment.

**Credit Requirements** mean the satisfaction of any and all financial measures and/or Credit Rating status so as to avoid a Downgrade Event, as defined in Section 7.3(a).

**Customer Disconnection Date** means the date when a Default Service Customer is disconnected from service, as determined by the Buyer in accordance with the Retail Delivery Tariff.

**Customer Group** means the Small Customer Group, Medium Customer Group or Large Customer Group, as the case may be.

**Customer Initiation Date** means the date a retail customer of the Buyer begins taking service pursuant to the Schedule DS of the Buyer's Retail Delivery Tariff, as determined by the Buyer.

**Customer Termination Date** means the date when a Default Service Customer ceases to take service pursuant to Schedule DS under the Retail Delivery Tariff.

**Default Service** means the provision of Requirements by Seller at the Delivery Point to the Buyer to meet all needs of Default Service Customers.

**Default Service Customer(s)** means the retail customer(s) in each Customer Group taking service pursuant to Schedule DS of the Retail Delivery Tariff during the applicable Delivery Term.

**Delivered Energy** means the quantity of energy, expressed in MWh, provided by Seller under the terms of this Agreement. This quantity shall be the sum of energy reported to the ISO by the Buyer for each of the Load Assets identified in Section 6.4, with such quantity determined by the Buyer in accordance with Section 6.3 of this Agreement. Such quantity shall not include any allocation of PTF losses up to and including the Delivery Point (which the ISO may assess to Seller in relation to such energy), but shall include transmission and distribution losses on the Buyer's System from the Delivery Point to the meters of Default Service Customers.

**Delivery Point** means the location where Requirements are settled under ISO Rules. Currently, the energy obligation is settled at the WCMA Load Zone. The Buyer's System is physically metered at Flag Pond, the interconnection between the Buyer and New England Power Company.

**Delivery Term(s)** means the applicable period(s) beginning at the start of HE 0100 EPT in Schedule 1 through and including the end of the HE 2400 EPT in Schedule 2 of Appendix A.

**DTE** means the Massachusetts Department of Telecommunications and Energy

**EPT** means Eastern Prevailing Time.

**Governing Documents** means, with respect to any particular entity, (a) if a corporation, the (i) articles of organization, articles of incorporation or certificate of incorporation and (ii) the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles or certificate of organization or formation and operating agreement; (e) if another type of entity, any other charter or similar document adopted or filed in connection with the creation, formation or organization of such entity; (f) all equity holders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any entity or relating to the rights, duties and obligations of the equity holders of any entity; and (g) any amendment or supplement to any of the foregoing.

**Interest Rate** means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day, on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

**Investment Grade** means (i) if any entity has a Credit Rating from both S&P and Moody's then, a Credit Rating from S&P equal to or better than "BBB-" and a Credit Rating from Moody's equal to or better than "Baa3"; or (ii) if an entity has a Credit Rating from only one of the S&P and Moody's, then a Credit Rating from S&P equal to or better than "BBB-" or a Credit Rating from Moody's equal to or better than "Baa3 or (iii) if the Parties have mutually agreed in writing on an additional or alternative rating agency, then a Credit Rating from S&P (if applicable) equal to or better than "BBB-" and/or a Credit Rating from Moody's (if applicable) equal to or better than "Baa3", and with respect to the additional or alternative rating agency, a credit rating equal to or better than that mutually agreed to by the Parties in each Party's sole and exclusive judgment.

**ISO** means the ISO New England Inc., its successors and/or assigns

**ISO-NE Manuals** means the ISO Manual M-06 Financial Transmission Rights, the ISO Manual M-11 Market Operations, the ISO Manual M-20 Installed Capacity, the ISO Manual M-27 Tariff Accounting, the ISO Manual M-28 Market Rule 1 Accounting, the ISO Manual M-29 Billing, the ISO Manual M-35 Definitions and Abbreviations, the ISO Manual M-36 Forward Reserve, the ISO Manual M-LRP Load Response Program, as they may be amended, restated, or succeeded from time to time. In the event that ISO adopts additional manuals, then these shall also be included in this definition.

**ISO Rules** means all rules adopted by the ISO or NEPOOL, as such rules may be amended, added, superceded and restated from time to time, including but not limited to, the NEPOOL Agreement, ISO New England Inc. Transmission, Markets and Services Tariff FERC Electric

Tariff No. 3, the Transmission Operating Agreement, and the Participants Agreement, the ISO Manuals, and the ISO Operating Procedures.

**KWh** means Kilowatt-hour.

**Large Customer Group** shall mean Buyer's retail customers assigned to the rate class GD-3 under the Buyer's Retail Delivery Tariff

**Material Adverse Effect** means, with respect to a Party, any change in or effect on such Party after the date of this Agreement that is materially adverse to the transactions contemplated hereby, excluding any change or effect resulting from (a) changes in the international, national, regional or local wholesale or retail markets for electric power; (b) changes in the international, national, regional or local markets for any fuel; (c) changes in the North American, national, regional or local electric transmission or distribution systems; and (d) any action or inaction by a governmental authority, but in any such case not affecting the Parties or the transactions contemplated hereby in any manner or degree significantly different from others in the industry as a whole.

**Medium Customer Group** shall mean Buyer's retail customers assigned to rate classes GD-2, GD-4, GD-5 and SD under its Retail Delivery Tariff

**Moody's** means Moody's Investors Service, its successors and assigns.

**MWh** means Megawatt-hour.

**NE-GIS** means the NEPOOL Generation Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity consumed within New England.

**NE-GIS Certificates** means a document produced by the NE-GIS that identifies the relevant generation attributes of each MWh accounted for in the NE-GIS from a generation unit.

**NEPOOL** means the New England Power Pool, or its successor.

**NEPOOL Agreement** means the Second Restated New England Power Pool Agreement dated as effective on February 1, 2005, as amended or accepted by the Commission and as may be amended, superseded and/or restated from time to time

**PTF** means facilities categorized as Pool Transmission Facilities under ISO Rules.

**Requirements** shall be defined in Section 4.2(c).

**Retail Delivery Tariff** means FG&E's Tariff for Electric Service.

**Service Requirement** means a load-following, wholesale power supply requirement, defined by a unique combination of Customer Group and Service Type.

**Shareholder Equity** means the Common Stock Equity as defined in the audited annual financial

statements prepared as of the date of determination in accordance with GAAP.

**Small Customer Group** shall mean Buyer's retail customers assigned to rate classes RD-1, RD-2, and GD-1 under its Retail Delivery Tariff

**S&P** means Standard & Poor's Rating Group, its successors and assigns.

**WCMA Load Zone** means the West Central Massachusetts Load Zone as defined in the ISO Rules.

### **ARTICLE 3. TERM, SERVICE PROVISIONS AND REGISTRATION REQUIREMENTS**

#### **Section 3.1 Term**

This Agreement shall be effective immediately upon execution by the Parties and shall continue in effect until final payment is made hereunder. As of the expiration of this Agreement or, if earlier, its termination, the Parties shall no longer be bound by the terms and provisions hereof, except (a) to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before such expiration or termination and (b) the obligations of the Parties hereunder with respect to audit rights, remedies for default, damages claims, indemnification and defense of claims shall survive the termination or expiration of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run, subject to any time limits specifically set forth in this Agreement.

#### **Section 3.2 Commencement of Supply**

(a) Beginning as of the Commencement Date applicable to the customer group(s) set forth on Appendix A, Seller shall provide Requirements to the Buyer. For purposes of certainty: Seller's obligations on the Commencement Date shall be to provide Requirements for all Default Service Customers taking service as of and including the Commencement Date.

(b) With respect to each person or entity that becomes a Default Service Customer subsequent to the Commencement Date, Seller shall provide Requirements to the Buyer to meet the needs of the Default Service Customer(s) as of and including the Customer Initiation Date for such customer initiating such service during the Delivery Term.

(c) During the Delivery Term that Seller provides Default Service to the Buyer's Large Customer Group, Buyer shall make best efforts to notify Seller promptly of all Customer Initiation Dates of retail customers in the Large Customer Group. Upon such notice, Buyer shall also provide historic annual (prior billed 12 months) peak kVa and total kWh consumption for such customers.

#### **Section 3.3 Termination and Conclusion of Supply**

(a) With respect to each Default Service Customer that terminates Default Service during the Delivery Term Seller shall not provide Requirements for such customer as of the Customer Termination Date.

(b) During the Delivery Term that Seller provides Default Service to the Buyer's Large Customer Group, Buyer shall make best efforts to notify Seller promptly of all Customer Termination Dates and Customer Disconnection Dates of retail customers in the Large Customer Group. Upon such notice, Buyer shall also provide historic annual (prior billed 12 months) peak kVa and total kWh consumption for such customers.

(c) Seller's obligation to provide Requirements shall cease at the Conclusion Date.

#### Section 3.4 Distribution Service Interruptions

Seller acknowledges that interruptions in distribution service occur and may reduce the load served hereunder. Seller further acknowledges and agrees that the Buyer may interrupt distribution service to customers consistent with the Distribution Service Terms and the Competitive Supplier Terms. In no event shall a Party have any liability or obligation to the other Party in respect of any such interruptions in distribution service.

#### Section 3.5 Release of Customer Information

The Buyer will not issue any customer information to Seller unless Seller has first obtained the necessary authorization in accordance with the provisions of the Competitive Supplier Terms.

#### Section 3.6 Change in Supply; No Prohibition on Programs

(a) Seller acknowledges and agrees that the number of customers and the Requirements to meet the needs of such customers will fluctuate throughout the Delivery Term and may equal zero. The Buyer shall not be liable to Seller for any losses Seller may incur, including but not limited to lost revenues, and losses that may result from any change in Requirements, number or location of customers taking service, the location of the Delivery Point(s), the composition or components of market products or Requirements, or the market for electricity, or change in the Retail Delivery Tariff. Seller further acknowledges and agrees that there is no limit on the number of Customer Initiation Dates, Customer Termination Dates and Customer Disconnection Dates.

(b) Seller acknowledges and agrees that the Buyer have the right but not the obligation to continue, initiate, support or participate in any programs, promotions, or initiatives designed to or with the effect of encouraging customers to leave Default Service for any reason ("Programs"). Nothing in this Agreement shall be construed to require notice to or approval of Seller in order for the Buyer to take any action in relation to Programs.

(c) Seller acknowledges and agrees that the Buyer and Affiliates of the Buyer will not provide Seller preferential access to or use of the Buyer's System and that Seller's sole and exclusive rights and remedies with regard to access to, use or availability of the Buyer's System, and the Buyer's or Affiliates of the Buyer's obligation to transmit electricity are those rights, remedies and obligations provided under the Retail Delivery Tariff, the ISO Rules, and the Buyer's Open Access Transmission Tariff.

#### Section 3.9 Disclosure Requirements

The Seller shall provide the Buyer information pertaining to power plant emissions, fuel types, labor information and any other information required by the Buyer to comply with Massachusetts Disclosure Label requirements. Using the NE-GIS, the Seller is obligated to transfer the NE-GIS Certificates, associated with the Service Requirements into the Buyer's NE-GIS Account. The Buyer would be obligated to confirm such transfers in the NE-GIS.

Nothing in this Section 3.9 shall be construed to require the Seller to provide new renewable NE-GIS certificates, which FG&E requires to comply with the Massachusetts Renewable Portfolio Standard.

#### Section 3.10 Regulatory Approvals

Notwithstanding Article 21(d), below, or anything else to the contrary herein, the Parties' obligations under this Agreement are subject to Buyer obtaining approval from the DTE of the inclusion in retail rates of the amounts payable by Buyer to Seller under this Agreement, without material modification to the obligations of either Party under this Agreement. Buyer shall use its best efforts to obtain prompt approval of such rates. If Buyer is unable to obtain DTE approval by [date], Buyer and Seller agree to review the status of such approval process and determine whether to continue to pursue the transaction contemplated in this Agreement. If the Parties cannot agree as to how to continue such transaction, this Agreement shall terminate without liability to either Party.

### **ARTICLE 4. SALE AND PURCHASE**

#### Section 4.1 Provision Delivery and Receipt

Seller shall provide and deliver to the Delivery Point and the Buyer shall receive at the Delivery Point the percent of the Requirements applicable to each Service Requirement as set forth on Appendix A during the Delivery Term.

#### Section 4.2 Responsibilities

(a) Buyer shall be responsible for arranging and paying for the transmission of the power across NEPOOL PTF and for any ancillary services, allocated to the Network Load, associated with the Service Requirements. Arranging and paying for transmission across NEPOOL PTF, required of the Buyer, includes, but is not limited to taking Regional Network Service under Schedule 9 of the ISO New England Inc. Transmission, Markets and Services Tariff ("ISO Tariff") and Network Integration Transmission Service under Schedule 21- NEP under the ISO Tariff. Arranging and paying for ancillary services, required by the Buyer, includes, but is not limited to any transmission dispatch or power administration services, as may be allocated to Network Load in accordance with ISO Rules.

(b) Seller shall be responsible for all present and future obligations, requirements, and costs associated with the Requirements. Seller shall not be responsible for the provision of NE-GIS Certificates necessary for FG&E's compliance with the Massachusetts Renewable Portfolio Standards.

(c) Requirements mean the provision of energy as set forth in Section 4.2(e), capacity as set forth in Section 4.2(f), and ancillary services as set forth in Section 4.2(g), associated with the Service Requirements as set forth in Appendix A at the Delivery Point.

(d) If ISO Rules are modified during the Term of this Agreement, which change the allocation of currently existing charges and obligations from the Load Asset, associated with the Service Requirements to the Network Load, associated with the Buyer's transmission responsibilities, then, if possible, the charges or obligations shall be transferred back to the Seller through the ISO and/or NEPOOL settlement process. If such transfer is not possible, then the Seller shall compensate the Buyer for any additional cost. If ISO Rules are modified during the Term of this Agreement, which change the allocation of currently existing charges and obligations from the Network Load, associated with the Buyer's transmission responsibilities to the Load Asset, associated with the Service Requirements, then, if possible, the charges or obligations shall be transferred back to the Buyer through the ISO and/or NEPOOL settlement process. If such transfer is not possible, then the Buyer shall compensate the Seller for such charges. If ISO Rules are changed after the date of this Agreement, which create new charges or obligations, associated with the Service Requirements, then the Seller shall be responsible for such new charges or obligations. Likewise, if ISO Rules are changed during the Term of this Agreement, which create new charges or obligations, associated with the Network Load, associated with the Buyer's transmission responsibilities, then the Buyer shall be responsible for such charges or obligations.

(e) Provision of energy includes, but is not limited to the following. Seller shall have the Real-Time Load Obligation, associated with the Service Requirements at the Delivery Point. Currently, the Energy Settlement Obligation, associated with the Service Requirements at the Delivery Point, is settled at the WCMA Load Zone. In the event that NEPOOL or the ISO implements nodal settlement of load obligations of the DayAhead Energy Market and Real-Time Energy Market, the Seller shall continue to be responsible for DayAhead and Real-Time Load Obligations at the appropriate settlement location(s), associated with the Service Requirements at the Delivery Point. Seller shall be responsible for submitting Demand Bids in the DayAhead Energy Market, associated with the Service Requirements.

(f) Provision of capacity includes, but is not limited to the following. Seller shall have the ICAP Settlement Obligation, associated with the Service Requirements at the Delivery Point. Currently, the ICAP Settlement Obligation, associated with the Service Requirements at the Delivery Point, can be satisfied with any ICAP resource, recognized by the ISO in the NEPOOL control-area or imported into the NEPOOL control-area. In the event that NEPOOL implements a locational capacity requirement, including that which was proposed in the Commission's docket number ER03-563, then the Seller will be responsible for providing ICAP at the location, required to meet the Locational ICAP Settlement Obligation, associated with the Service Requirements at the Delivery Point.

(g) Provision of ancillary services, required of the Seller, includes, but is not limited to Regulation, Operating Reserves, Reliability MustRun Operating Reserves, Forward Reserves, and any transmission dispatch or power administration services, as may be allocated to the Owner of the Load Assets, associated with the Service Requirements in accordance with ISO Rules. If ISO Rules are changed such that locational ancillary services are required, then the Seller shall be responsible for meeting the locational ancillary services requirement, associated with the Service

## Requirements at the Delivery Point.

(h) It is the intent of the Parties that for each Financial Transmission Rights Auction (“FTR Auction”) conducted by the ISO for months within the Delivery Terms(s), those Auction Revenue Rights (“ARRs”) associated solely with the Service Requirement shall be assigned or paid to Seller, provided, however, Buyer shall be under no obligation to participate in any manner in any FTR Auction in order to increase Auction Revenue Right quantities.

## **ARTICLE 5. AMOUNT, BILLING and PAYMENT**

### Section 5.1 Amount

(a) The amount payable by the Buyer to Seller for Delivered Energy in a month shall be the product of (a) the sum of the Delivered Energy for each Customer Group and Service Type, as identified in Appendix A in each month during the applicable Delivery Term; and (b) the Contract Rate for such Service Requirement as identified in Appendix B for such month during the applicable Delivery Term.

(b) *[provisional]* If Appendix B indicates that the monthly prices for the period beginning October 2006 and beyond for each of the Service Requirements exclude the cost of providing capacity, then during this period in addition to the amount payable as described in Section 5.1(a), payment from Buyer to Seller shall include, as compensation for the provision of capacity requirements, the amount calculated to reproduce the actual cost that would have been determined, assigned, and billed through the ISO settlement process as if (regardless of the actual circumstances) (a) the monthly installed capacity, unforced capacity, locational installed capacity, or locational unforced capacity obligation under this Agreement (the “MC Obligation” (with the units of measurements of the MC Obligations (such as kW or MW) referred to herein as the “Units”)) was the Seller’s only capacity obligation and (b) that the MC Obligation was satisfied through the ISO spot auction such that the per-Unit capacity payment shall equal the ISO spot auction capacity clearing price less any credits associated with the MC Obligation, including any Capacity Transfer Rights (CTRs) credits.

(c) *[provisional]* If Section 5.1(b) is applicable, then the Buyer and the Seller may mutually agree to a fixed price per Unit of MC Obligation, or agree to revise the Contract Prices on Appendix B such that they include the cost of providing capacity requirements as part of the fixed monthly price, for those future months for which capacity obligations have not been settled by the ISO.

### Section 5.2 Billing and Payment

(a) On the tenth (10th) day of each month (“Invoice Date”) during the term of this Agreement, Seller shall calculate the amount due and payable to Seller for Delivered Energy with respect to the preceding month (the “Calculation”). Seller shall provide the Calculation to the

Buyer and such Calculation shall include sufficient detail for the Buyer to verify its formulation and computation. Calculations under this paragraph shall be subject to recalculation in accordance with Article 6 and shall be subject to adjustment (positive or negative) based upon such recalculation (a "Reconciliation Adjustment"). Seller shall promptly calculate the Reconciliation Adjustment upon receiving data described in Section 6.3 and shall include the adjustment, if any, in the next month's Invoice. A Reconciliation Adjustment based upon a change in the quantity for an earlier month shall be calculated using the applicable Contract Rate for the month in which the Delivered Energy was received.

(b) Seller shall submit to the Buyer an invoice with such Calculation as provided for in paragraph (a) of this Section (the "Invoice") and the respective amounts due under this Agreement on the Invoice Date. The Buyer shall pay Seller the amount of the Invoice (including the Reconciliation Adjustment, if any, as a debit or credit) less any amounts disputed in accordance with Section 5.3, on or before the tenth (10th) day after the Invoice Date, or the next following Business Day, (the "Due Date"). Except for amounts disputed in accordance with Section 5.3, if all or any part of the Invoice remains unpaid after the Due Date, interest shall accrue after but not including the Due Date and be payable to Seller on such unpaid amount at the Interest Rate in effect on the Due Date. The Due Date for a Reconciliation Adjustment shall be the Due Date of the Invoice in which it is included.

(c) Each Party shall notify the other Party upon becoming aware of an error in an Invoice, Calculation or Reconciliation Adjustment (whether the amount is paid or not) and Seller shall promptly issue a corrected Invoice. Overpayments shall be returned by the receiving Party upon request or deducted by the receiving Party from subsequent invoices, with interest accrued at the Interest Rate from the date of the receipt of the overpayment until the date paid or deducted.

### Section 5.3 Challenge to Invoices

Unless otherwise agreed: (i) either Party may challenge, in writing, the accuracy of Calculations, Invoices, Reconciliation Adjustments and data no later than twentyfour (24) months after the Due Date of the Invoice in which the disputed information is contained; (ii) if a Party does not challenge the accuracy within such twentyfour (24) month period, such Invoice shall be binding upon that Party and shall not be subject to challenge. With respect to amounts paid that are later disputed, upon notice of dispute, the Party receiving payment shall hold the amount in dispute in escrow for the benefit of the prevailing Party until the resolution of such dispute. If any amount in dispute is ultimately determined (under the terms herein) to be due to the other Party, it shall be paid or returned (as the case may be) to the other Party within three (3) Business Days of such determination along with interest accrued at the Interest Rate from the (i) date due and owing in accordance with the Invoice until the date paid or (ii) if the amount was paid and is to be returned, from the date paid, until the date returned.

### Section 5.4 Taxes, Fees and Levies

Seller shall be obligated to pay all present and future taxes, fees and levies ("Taxes") which may be assessed by any entity upon the Seller's performance under this Agreement including but not limited to the purchase and sale of Requirements. Seller shall pay all Taxes with respect to the Requirements up to and at the Delivery Point, and the Buyer will pay all Taxes with respect to the Requirements after the Delivery Point. All Requirements, including electricity and other related

market products delivered hereunder by Seller to the Buyer shall be sales for resale with the Buyer reselling such electricity and products.

#### Section 5.5 Netting and Setoff

Except for security provided pursuant to Section 7.3 (which shall not be considered for purposes of this Section 5.5) and unless otherwise specified in another agreement between the Parties, if the Parties are required to pay an amount in the same month each to the other under this Agreement or any other agreement between the Parties, or if any costs that are a Party's responsibility under this Agreement are incorrectly or inappropriately charged to the Party by the ISO, such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. Each Party reserves all rights, setoffs, counterclaims and other remedies and defenses (to the extent not expressly herein or therein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement or the other agreement. Further, if the Buyer incurs any costs or charges that are the responsibility of Seller under this Agreement, such costs or charges may, at the Buyer election, be netted against any amount due to Seller under this Agreement. All outstanding obligations to make payment under this Agreement or any other agreement between the Parties may be netted against each other, set off or recouped there from, or otherwise adjusted.

### **ARTICLE 6. QUALITY; LOSSES and QUANTITIES REQUIRED; DETERMINATION AND REPORTING OF HOURLY LOADS**

#### Section 6.1 Quality

All electricity shall be delivered to the Buyer in the form of three phase sixty-hertz alternating current at the Delivery Point.

#### Section 6.2 Losses

Seller shall be responsible for any transmission losses up to and including the Delivery Point. Losses beyond the Delivery Point are included in Delivered Energy and are paid for by the Buyer at the applicable Contract Rate.

#### Section 6.3 Determination and Reporting of Hourly Loads

(a) The Buyer will estimate the Delivered Energy for Default Service provided by Seller pursuant to this Agreement based upon average load profiles developed for each of the Buyer's customer classes, actual metered data, as available, and the Buyer's actual total hourly load. The Buyer shall report to the ISO and Seller, the estimated Delivered Energy. The Buyer will normally report to the ISO and to Seller Seller's estimated Delivered Energy by 1:00 P.M. EPT of the second following Business Day. The Buyer shall have the right but not the obligation, in its sole and exclusive judgment, to modify the Estimation Process from time to time, provided that any such modification is designed with the objective of improving the accuracy of the Estimation Process.

Each month, the Buyer shall reconcile the Buyer's estimate of the Delivered Energy based upon

the Buyer's meter reads (such meter reads as provided for in the Retail Delivery Tariff). The reconciliation, including all losses, shall be the adjusted Delivered Energy. The Buyer will normally notify the ISO of any resulting adjustment (debit or credit) to Seller's account for the Load Assets (set forth in Section 6.4) no later than the last day of the third month following the billing month.

#### Section 6.4 NEPOOL Settlement Power System Model Implementation

The Default Service provided by Seller pursuant to this Agreement will be initially represented within the NEPOOL Settlement Power System Model as described in Appendix A.

As soon as possible after the execution of this Agreement and before the Commencement Date, the Buyer shall assign to Seller, and Seller shall accept assignment of an Ownership Share for each Load Asset identified in Appendix A. Such assignment shall be effective beginning on the Commencement Date. Seller shall take any and all actions necessary to effectuate such assignment including executing documents required by ISO Rules. Once Seller's provision of Default Service terminates (at the end of a Delivery Term or otherwise), the Buyer and Seller will terminate Seller's Ownership Shares of the aforementioned Load Assets.

The Buyer shall have the right to change the Load Asset designations (identified above) from time to time, consistent with the definition and provision of Default Service. If and to the extent such designations change, the Buyer and Seller shall cooperate to timely put into effect the necessary documents that may be required to implement the new designations and terminate the prior designations.

### **ARTICLE 7.            DEFAULT AND TERMINATION**

#### Section 7.1 Events of Default

(a) Any one or more of the following events shall constitute an "Event of Default" hereunder with respect to the Buyer:

(i) Failure of the Buyer

(A) in any material respect to comply with, observe or perform any covenant, warranty or obligation under this Agreement (but excluding events that are otherwise specifically covered in this Section as a separate Event of Default and except due to causes excused by Force Majeure or attributable to Seller's' wrongful act or failure to act in breach of this Agreement); and

(B) After receipt of written notice from Seller such failure continues for a period of five (5) Business Days, or, if such failure cannot be reasonably cured within such five (5) Business Day period, such further period as shall reasonably be required to effect such cure (but in no event longer than thirty (30) days), provided that the Buyer commences within such five (5) Business Day period to effect a cure and at all times thereafter proceed

diligently to complete the cure as quickly as possible and provides to Seller written documentation of its efforts and plan to cure and estimated time for completion of the cure.

(ii) Failure of the Buyer to (A) make when due any undisputed payment due to Seller hereunder; and (B) after receipt of written notice from Seller such failure continues for a period of three (3) Business Days.

(iii) Failure of the Buyer to accept Default Service in accordance with Article 3 (unless excused by Force Majeure or attributable to the Seller's wrongful act or failure to act in breach of this Agreement, or otherwise in accordance with this Agreement).

(b) Any one or more of the following events shall constitute an "Event of Default" hereunder with respect to Seller:

(i) Failure of Seller

(A) in any material respect to comply with, observe, or perform any covenant, warranty or obligation under this Agreement (but excluding events that are otherwise specifically covered in this Section as a separate Event of Default and except due to causes excused by Force Majeure or attributable to the Buyer's wrongful act or wrongful failure to act in breach of this Agreement); and

(B) after receipt of written notice from the Buyer such failure continues for a period of five (5) Business Days, or, if such failure cannot be reasonably cured within such five (5) Business Day period, such further period as shall reasonably be required to effect a cure (but in no event longer than thirty (30) days), provided that Seller commences within such five (5) Business Day period to effect such cure and at all times thereafter proceeds diligently to complete the cure as quickly as possible and provides to the Company written documentation of its efforts and plan to cure and estimated time for completion of the cure;

(ii) Failure of Seller to provide Requirements in accordance with Articles 3 and 4

(c) Any one or more of the following events with respect to either Party shall constitute an "Event of Default" hereunder with respect to such Party:

(i) The entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of such Party in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or (B) a decree or order adjudging such Party as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of such Party under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Party or of any substantial part of its property, or ordering the winding up or liquidation of its affairs;

- (ii) The commencement by such Party of a voluntary case or proceeding, or any filing by a third party of an involuntary case or proceeding against a Party that is not dismissed within forty-five (45) days of such filing, under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or of any other case or proceeding to be adjudicated as bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of such Party in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of a Party or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by such Party in furtherance of any such action;
- (iii) Any representation or warranty made by a Party is or becomes false or misleading in any material respect.
- (iv) Failure of such Party to deliver Performance Assurance when due in accordance with Section 7.3

## Section 7.2 Remedies Upon Default

The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

- (a) Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to (i) continue performance under this Agreement and exercise such rights and remedies as it may have at law, in equity or under this Agreement and seek remedies as may be necessary or desirable to enforce performance and observation of any obligations and covenants under this Agreement, so long as such rights and remedies are not duplicative of any other rights and remedies hereof, and do not otherwise enable the non-defaulting Party to obtain performance or payments in excess of the performance and payments to which it is otherwise entitled pursuant to this Agreement, or (ii) at its option, give such defaulting Party a written notice (a "Termination Notice") terminating this Agreement. Upon a termination for a default or Event of Default under Section 7.1(a), (b) or (c)(iii), such termination shall be effective as of the date specified in the Termination Notice, which date shall be no earlier than the date such notice is effective and no later than thirty (30) days after the date of such notice is provided to the defaulting Party in accordance with Article 8. Upon a termination for a default or Event of Default under Section 7.1(c)(i) or (ii), such termination shall be effective as of the Event of Default upon notice being provided to the defaulting Party in accordance with Article 8. Any attempted cure by a defaulting Party after this Agreement has been terminated by the nondefaulting Party shall be void and of no effect. The Parties' obligations under this Agreement, in general and under this Section 7.2 in particular, are subject to the duty to mitigate damages as provided under common law.

(b) At any time after the occurrence of an Event of Default, or the delivery of a Termination Notice to the defaulting Party by the non-defaulting Party, the non-defaulting Party may exercise any rights it may have pursuant to the Article 7.3 (Security).

(c) In the event of termination for an Event of Default as provided in Section 7.1, in addition to any amounts owed for performance (or failure to perform) hereunder prior to such termination, the non-defaulting Party may recover, without duplication, its direct damages resulting from such Event of Default; such damages shall include the positive (if any) present value of this Agreement to the non-defaulting Party for the portion of the Delivery Term remaining at the time of such termination, to be determined by reference to market prices, transaction costs and load reasonably projected for the remaining portion of the Delivery Term ("Termination Damages"). The Termination Damages shall include all reasonably incurred transaction costs and expenses that otherwise would not have been incurred by the non-defaulting Party. In determining its Termination Damages, the non-defaulting Party shall offset its losses and costs by any gains or savings realized by the non-defaulting Party as a result of the termination.

Payment of Termination Damages, if any, shall be made by the defaulting Party to the non-defaulting Party within five (5) days after calculation of such Termination Damages and receipt of a notice including such calculation of the amounts owed hereunder and a written statement showing in reasonable detail the calculation and a summary of the method used to determine such amounts. Upon the reasonable request of the defaulting Party, the non-defaulting Party shall provide reasonable documentation to verify the costs underlying the Termination Damages. If the defaulting Party disputes the non-defaulting Party's calculation of the Termination Damages, in whole or in part, the defaulting Party shall, within five (5) days of receipt of the non-defaulting Party's calculation of the Termination Damages, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that, the defaulting Party shall first pay the Termination Damages, if any, to the non-defaulting Party in accordance with the preceding sentence, and the non-defaulting Party shall then deposit such disputed amount into an interest bearing escrow account for the benefit of the prevailing Party and the dispute shall be resolved in accordance with Section 15.2.

(d) Notwithstanding any other provision of this Agreement, the cure of any default or failure to comply with, observe or perform any covenant, warranty or obligation under this Agreement within the period provided therefore in this Article shall not release such defaulting Party from its obligations under Section 9.2 of this Agreement.

(e) Upon termination the Buyer shall, and upon the occurrence of an Event of Default by Seller, the Buyer shall have the right to, immediately notify the ISO that (i) the assignment from the Buyer to Seller of the 100% Ownership Share has been terminated, (ii) the Load Assets shall be removed from Seller's account and placed in the account of the Buyer and (iii) Seller consents to such action. In the event the Buyer so notifies the ISO, Seller shall immediately take any and all actions that may be required by the ISO to remove the Load Assets from Seller's account and place them in the account of the Buyer. If the Agreement has not been terminated, the Buyer, in its sole discretion with 5 Business Days prior notice to Seller, may elect to assign the 100% Ownership Share of the Load Assets to the account of Seller and Seller shall accept such assignment, consistent with the actions required by Section 6.4 of this Agreement.

### Section 7.3 Security

(a) If (i) with respect to Seller, the Credit Rating of Seller is downgraded by Moody's and S&P, such that its Credit Rating is below an Investment Grade; or (ii) with respect to Buyer, its Shareholder Equity is at any time less than [To be determined] (each a "Downgrade Event"), then within three (3) Business Days after a request of the other Party, the downgraded Party shall deliver the applicable amount of performance assurance required pursuant to this Article 7 ("Performance Assurance") to the other Party ("Compliant Party").

(b) If Performance Assurance is required to be posted by a Party pursuant to the immediately preceding paragraph, the following Sections 7.3(b)(i) through 7.3(b)(iv) shall apply:

(i) The Compliant Party shall calculate its exposure under this Agreement as soon as practicable after the Downgrade Event, and on a monthly basis thereafter ("Performance Assurance Calculation Date").

(ii) All Performance Assurance shall be delivered in the form of: (i) U.S. Dollars delivered by wire transfer of immediately available funds ("Funds"); or (ii) a Letter of Credit from a Qualified Institution (as defined herein). For purposes of determining the amount of Performance Assurance held at any time, a Letter of Credit shall be valued at zero unless it expires more than thirty (30) days after the date of valuation. For purposes of this Agreement, the Parties acknowledge that any Performance Assurance provided by Buyer shall be in the form of Funds as defined in this Section 7.3. For purposes hereof, "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an affiliate of either Party) with such bank having a credit rating of at least A from S&P and A3 from Moody's, having \$1,000,000,000 in assets (a "Qualified Institution"), and otherwise being in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

(iii) For purposes hereof, it shall be a Letter of Credit Default ("Letter of Credit Default") with respect to an outstanding Letter of Credit, upon the occurrence of any of the following events: (i) the bank issuing the Letter of Credit shall fail to maintain a credit rating of at least "A-" by S&P and "A3" by Moody's, (ii) the bank issuing the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the bank issuing the Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of such Letter of Credit; (iv) such Letter of Credit shall fail or cease to be in full force and effect at any time during the term of any outstanding transaction; (v) any event analogous to an event specified in Section 7.1(b) of this Agreement shall occur with respect to the bank issuing the Letter of Credit; or (vi) the pledgor or the bank issuing the Letter of Credit shall fail to cause the renewal or replacement of the Letter of Credit to the secured party at least thirty (30) Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the pledgor in accordance with the terms of this Agreement. If a Letter of Credit Default occurs, then the Party which applied for such Letter of Credit shall have five (5) Business Days to cure the event(s) causing the Letter of Credit Default or to replace the Letter of Credit with a substitute Letter of Credit or Funds. Any failure to cure the event(s) causing the Letter of

Credit Default or to provide a substitute Letter of Credit or Funds within five (5) Business Days of the event(s) leading to the Letter of Credit Default shall be an Event of Default under Section 7.1(c)(iv).

(iv) The Compliant Party will be entitled to hold posted Performance Assurance, provided that the following conditions applicable to it are satisfied: (1) the Compliant Party is not a defaulting Party; (2) the Compliant Party or Seller has and maintains an Investment Grade Credit Rating or at least the minimum Shareholder Equity required in Section 7.3(b), as applicable; and (3) the posted Performance Assurance is held only in the United States. For funds held as Performance Assurance by the Compliant Party, the Interest Rate will be the Federal Funds Rate as from time to time in effect. "Federal Funds Rate" means, for the relevant determination date, the rate opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System. Such interest shall be calculated commencing on the date Performance Assurance in the form of cash is received by a Party but excluding the earlier of: (i) the date Performance Assurance in the form of cash is returned to a Party; or (ii) the date Performance Assurance in the form of cash is applied to a pledgor's obligations pursuant to Section 7.3 with the net amount of interest accrued monthly being payable on the third Business Day of the following month. A Party holding Performance Assurance may apply such Performance Assurance, without prior notice to the other party, to satisfy the obligations of the other Party in accordance with Section 7.2. Each Party hereby covenants and agrees that it shall be entitled herein to hold posted Performance Assurance as custodian on its own behalf as a secured party if it meets the criteria set forth above in this Section 7.3. However, if the Party holding Performance Assurance is not eligible to hold posted Performance Assurance pursuant to this Section 7.3, then such Party shall be considered ineligible to hold posted Performance Assurance as a secured party and such posted Performance Assurance shall be maintained as follows: the ineligible secured party will cause all posted Performance Assurance received from the other Party to be segregated from the secured party's own property and identified clearly as Performance Assurance and to be held in an account in which no property of the secured party is held (a "Collateral Account") with a domestic office of a Qualified Institution, each of which accounts may include property of other parties which have delivered posted Performance Assurance to the secured party under other agreements, but will bear a title indicating that the secured party's interest in said account is as a holder of collateral. Such accounts will bear interest at the rate offered by the Qualified Institution. In addition, the secured party may direct the pledgor to transfer or deliver eligible Performance Assurance directly into the secured party's Collateral Account. The secured party shall cause statements concerning the posted Performance Assurance transferred or delivered by the pledgor to be sent to the pledgor on request, which may not be made more frequently than once in each calendar month.

(d) Prior to the Commencement Date and at any time upon the request by Buyer or Seller or by Seller of Buyer, the Party to whom the request is made shall establish that it meets the Credit Requirements by providing (x) a certificate of one of its authorized officers, accompanied by supporting certified financial statements and (y) documentation of its Credit Rating or its Shareholder Equity, as applicable. Buyer and Seller shall inform the other Party within one (1) Business Day of any failure to satisfy the Credit Requirements, provided that, in no event, shall the failure of a Party to provide the notice required pursuant to this sentence constitute a default or an Event of Default pursuant to Section 7.1.

Section 7.4    Forward Contract.

Each Party represents and warrants to the other that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, that this Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement, including but not limited to those specified in Section 7, shall be “contractual rights” as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

**ARTICLE 8.                    NOTICES, REPRESENTATIVES OF THE PARTIES**

Section 8.1    Notices

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. It shall either be sent by facsimile (with receipt confirmed by telephone), courier, personally delivered (including overnight delivery service) or mailed, postage prepaid, to the representative of the other Party designated in accordance with this Article. Any such notice, demand, or request shall be deemed to be given (i) when sent by facsimile confirmed by telephone, (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service) or (iii) seven (7) days after deposit in the United States mail, if sent by firstclass mail return receipt requested.

Notices and other communications by Seller to the Buyer shall be addressed to:

Mr. David K. Foote  
Sr. Vice President  
Fitchburg Gas and Electric Light Company  
6 Liberty Lane West  
Hampton, NH 03842  
(603) 773-6430 (phone)  
(603) 773-6630 (fax)

and

Notices concerning Article 7 shall also be sent to:

Mr. Mark H. Collin  
Treasurer  
Fitchburg Gas and Electric Light Company  
6 Liberty Lane West  
Hampton, NH 03842  
(603) 773-6612 (phone)  
(603) 773-6812 (fax)

Notices and other communications by the Buyer to Seller shall be addressed to:

[Name]  
[Company]  
[Address]  
[City, State & Zip]  
[Phone]  
[FAX]

Any Party may change its representative or address for notices by written notice to the other Party(ies); however such notice shall not be effective until it is received by the other Party(ies).

#### Section 8.2 Authority of Representative

The Parties' representatives shall have full authority to act for their respective Party in all matters relating to the performance of this Agreement. Notwithstanding the foregoing, a Party's representative shall not have the authority to amend, modify, or waive any provision of this Agreement unless they are duly authorized officers of their respective entities and such amendment, modification or waiver is made in accordance to Article 17.

### **ARTICLE 9. LIABILITY; INDEMNIFICATION; RELATIONSHIP OF PARTIES**

#### Section 9.1 Limitation on Consequential, Incidental and Indirect Damages

EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 9.2, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER THE BUYER NOR SELLER, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PARENT OR AFFILIATES, SUCCESSOR OR ASSIGNS, OR THE IR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, SUCCESSORS, OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR ITS PARENT, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES (INCLUDING ATTORNEY'S FEES OR LITIGATION COSTS EXCEPT AS EXPRESSLY PROVIDED IN 15.2) CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, OR ANY OTHER THEORY OF RECOVERY. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT.

#### Section 9.2 Indemnification

(a) Seller agrees to defend, indemnify and save the Buyer, its officers, directors, employees, agents, successors assigns, and Affiliates and their officers, directors, employees and

agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of a representation or warranty or failure to perform any covenant or agreement in this Agreement by Seller, (b) any violation of applicable law, regulation or order by Seller, (c) any act or omission by Seller with respect to this Agreement, first arising, occurring or existing during the term of this Agreement, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, except to the extent caused by an act of gross negligence or willful misconduct by an officer, director, agent, employee, or Affiliate of the Buyer or its respective successors or assigns.

(b) The Buyer agrees to defend, indemnify and save Seller, its officers, directors, employees, agents, successor, assigns, and Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of representation or warranty or failure to perform any covenant or agreement in this Agreement by said Buyer, (b) any violation of applicable law, regulation or order by said Buyer, (c) any act or omission by the Buyer, with respect to this Agreement first arising, occurring or existing during the term of this Agreement, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, except to the extent caused by an act of gross negligence or willful misconduct by an officer, director, agent, employee or Affiliate of Seller or its respective successors or assigns.

(c) If any Party intends to seek indemnification under this Section from the other Party with respect to any action or claim, the Party seeking indemnification shall give the other Party notice of such claim or action within thirty (30) days of the later of the commencement of, or actual knowledge of, such claim or action; provided, however, that in the event such notice is delivered more than thirty (30) days after the Party seeking indemnification knows of such claim or action, the indemnifying Party shall be relieved of its indemnity hereunder only if and to the extent such indemnifying Party was actually prejudiced by the delay. The Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such claim or action. The Party seeking indemnification shall not compromise or settle any such claim or action without the prior consent of the other Party, which consent shall not be unreasonably withheld.

### Section 9.3 Independent Contractor Status

Nothing in this Agreement shall be construed as creating any relationship between the Buyer and Seller other than that of independent contractors for the sale and delivery of Requirements for Default Service.

## **ARTICLE 10. ASSIGNMENT**

### Section 10.1 General Prohibition Against Assignments

Except as provided in Section 10.2, neither Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other

Party's written consent, which consent shall not be unreasonably withheld.

#### Section 10.2 Exceptions to Prohibition Against Assignments

(a) Seller may, without the Buyer's prior written consent, collaterally assign this Agreement in connection with financing arrangements provided that any such collateral assignment that provides for the Buyer to direct payments to the collateral agent (i) shall be in writing, (ii) shall not be altered or amended without prior written notice to the Buyer from both Seller and the collateral agent, and (iii) provided that any payment made by the Buyer to the collateral agent shall discharge the Buyer's obligation as fully and to the same extent as if it had been made to the Seller. Seller must provide the Buyer at least ten (10) days advance written notice of collateral assignment and provide copies of any such assignment and relevant agreements or writings.

(b) The Buyer may assign all or a portion of its rights and obligations under this Agreement to any Affiliate of the Buyer without consent of Seller. Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment

### **ARTICLE 11. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and permitted assigns.

### **ARTICLE 12. FORCE MAJEURE**

(a) Force Majeure shall include but not be limited to acts of God, earthquakes, fires, floods, storms, strikes, labor disputes, riots, insurrections, acts of war (whether declared or otherwise), acts of governmental, regulatory or judicial bodies, but if and only to the extent that such event or circumstance (i) directly affects the availability of the transmission or distribution facilities of NEPOOL, the Buyer or an Affiliate of the Buyer necessary to provide service to the Buyer's customers which are taking service pursuant to the Retail Delivery Tariff and (ii) it is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (A) fluctuations in Default Service, (B) the cost to a Party to overcome or avoid, or cause to be avoided, the event or circumstance affecting such Party's performance or (C) events affecting the availability or cost of operating any generating facility.

(b) To the extent that either Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations hereunder and (i) such Party gives notice and detail of the Force Majeure to the other Party as soon as practicable after the onset of the Force Majeure, including an estimate of its expected duration and the probable impact on the performance of its obligations

hereunder; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure, and (iii) the Party claiming Force Majeure uses commercially reasonable efforts to remedy or remove the inability to perform caused by Force Majeure, then the affected Party shall be excused from the performance of its obligations prevented by Force Majeure. However, neither Party shall be required to pay for any obligation the performance of which is excused by Force Majeure. This paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party involved in the dispute.

(c) No obligations of either Party which arose before the Force Majeure occurrence causing the suspension of performance shall be excused as a result of the Force Majeure.

(d) Prior to the resumption of performance suspended as a result of a Force Majeure occurrence, the Party claiming the Force Majeure shall give the other Party written notice of such resumption.

### **ARTICLE 13. WAIVERS**

No delay or omission in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. The waiver of any single breach or default of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other prior or subsequent breach or default of the Agreement or any other term or condition.

### **ARTICLE 14. LAWS AND REGULATIONS**

(a) This Agreement and all rights, obligations, and performances of the Parties hereunder, are subject to all applicable federal and state laws, and to all duly promulgated orders and other duly authorized action of governmental authorities having jurisdiction hereof.

(b) The rates, terms and conditions contained in this Agreement are not subject to change under Section 205 of the Federal Power Act as that section may be amended or superceded, absent the mutual written agreement of the Parties. Each Party irrevocably waives its rights, including its rights under §§ 205/206 of the Federal Power Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Agreement or any other agreements entered into in connection with this Agreement. By this provision, each Party expressly waives its right to seek or support: (i) an order from FERC finding that the market based rate(s), charges, classifications, terms or conditions agreed to by the Parties in the Agreement are unjust and unreasonable; or (ii) any refund with respect thereto. Each Party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter.

(c) Absent the agreement of all Parties to a proposed change, the standard of review for changes to this Agreement proposed by a non-party or the Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

## **ARTICLE 15. INTERPRETATION, DISPUTE RESOLUTION**

### **Section 15.1 Governing Law**

The Agreement shall be governed by and construed and performed in accordance with and the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles.

### **Section 15.2 Dispute Resolution**

All disputes between the Buyer and Seller under this Agreement shall be referred, upon notice by one Party to the other Party, to a senior manager of Seller designated by Seller, and a senior manager of the Buyer designated by the Buyer, for resolution on an informal basis as promptly as practicable. In the event the designated senior managers are unable to resolve the dispute within ten (10) days of receipt of the notice, or such other period to which the Parties may jointly agree, such dispute shall be submitted to arbitration and resolved in accordance with the arbitration procedure set forth in this Section. The arbitration shall be conducted in Boston, Massachusetts before a single neutral arbitrator mutually agreed to and appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, Seller and the Buyer shall each choose one arbitrator, who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within ten (10) days select a third arbitrator to act as chairman of the arbitration panel. In either case, the arbitrator(s) shall be knowledgeable in electric utility matters, including wholesale power transactions and power market issues, and shall not have any current or past material business or financial relationships with either Party or a witness for either Party and shall not have a direct or indirect interest in any Party or the subject matter of the arbitration. The arbitrator(s) shall afford each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the then-current arbitration rules of the CPR Institute for Dispute Resolution (formerly known as the Center for Public Resources), unless otherwise mutually agreed by the Parties. There shall be no formal discovery conducted in connection with the arbitration unless otherwise mutually agreed by the Parties; provided, however, that the Parties shall exchange witness lists and copies of any exhibits that they intend to utilize in their direct presentations at any hearing before the arbitrator(s) at least ten (10) days prior to such hearing, along with any other information or documents specifically requested by the arbitrator(s) prior to the hearing. Any offer made and the details of any negotiations to resolve the dispute shall not be admissible in the arbitration or otherwise. Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of his, her or their appointment and shall notify the Parties in writing of such decision and the reasons therefore, and shall make an award apportioning the payment of the costs and expenses of arbitration among the Parties; provided, however, that each Party shall bear the costs and expenses of its own attorneys, expert witnesses and consultants unless the arbitrator(s), based upon a determination of good cause, awards attorneys fees and

legal and other costs to the prevailing Party. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change the Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction, subject expressly to Section 15.3. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. Nothing in this paragraph shall impair the ability of a Party to exercise any right or remedy it has under this Agreement, including those in Article 7.

### Section 15.3 Venue; Waiver of Jury Trial

Each Party hereto irrevocably (i) submits to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

## **ARTICLE 16. SEVERABILITY**

Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining provisions and lawful obligations that arise under this Agreement. If any provision of this Agreement, or the application thereof to any Party or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision or circumstances shall not be affected by such invalidity or unenforceability.

## **ARTICLE 17. MODIFICATIONS**

No modification or amendment of this Agreement will be binding on any Party unless it is in writing and signed by both Parties.

## **ARTICLE 18. ENTIRE AGREEMENT**

This Agreement, including the Appendices, the tariffs and agreements referred to herein or therein, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. It is expressly acknowledged and agreed that there are no restrictions, promises, representations, warranties, covenants or undertakings contained in any material provided or otherwise made available by the Seller or the Buyer to each other. This

Agreement supersedes all prior agreements and understandings between the Parties with respect to the transactions contemplated hereby.

## **ARTICLE 19. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

## **ARTICLE 20. INTERPRETATION; CONSTRUCTION**

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. For purposes of this Agreement, the term "including" shall mean "including, without limitation". The Parties acknowledge that, each Party and its counsel have reviewed and or revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and it is the result of joint discussion and negotiation.

## **ARTICLE 21. REPRESENTATIONS; WARRANTIES AND COVENANTS**

Each Party represents to the other Party, upon execution and continuing throughout the term of this Agreement, as follows:

- (a) It is duly organized in the form of business entity set forth in the first paragraph of this Agreement, validly existing and in good standing under the laws of its state of its organization and has all requisite power and authority to carry on its business as is now being conducted, including all regulatory authorizations as necessary for it to legally perform its obligations hereunder.
- (b) It has full power and authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by it, and, assuming that this Agreement constitutes a valid and binding agreement of the other Party, constitutes its valid and binding agreement, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.
- (c) Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, or the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument to which it is bound any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (d) No declaration, filing with, notice to, or authorization, permit, consent or approval of any governmental authority is required for the execution and delivery of this Agreement by it or the performance by it of its obligations hereunder, other than such declarations, filings, registrations,

notices, authorizations, permits, consents or approvals which, if not obtained or made, will not, in the aggregate, have a Material Adverse Effect.

(e) Neither the execution and delivery of this Agreement by it will nor the performance by it of its obligations under this Agreement will or does (i) conflict with or result in any breach of any provision of its Governing Documents, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which it or any of its subsidiaries is a party or by which it or any of its subsidiaries is bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, in the aggregate, would not have a Material Adverse Effect; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to it, which violation would have a Material Adverse Effect.

(f) There are no claims, actions, proceedings or investigations pending or, to its knowledge, threatened against or relating to it before any governmental authority acting in an adjudicative capacity relating to the transactions contemplated hereby that could have a Material Adverse Effect. It is not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court or governmental authority which, individually or in the aggregate, would create a Material Adverse Effect.

(g) There are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, or of its knowledge threatened against it.

(h) It is a Participant of NEPOOL and is in compliance with all ISO Rules, including the NEPOOL Financial Assurance Policy

(i) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party hereto, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

## **ARTICLE 22.**

## **CONSENTS AND APPROVALS**

The Parties shall cooperate so that each Party may take such actions as necessary and required for the other Party to effectuate and comply with this Agreement including to (i) promptly prepare and file all necessary documentation, (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, and (iii) use all commercially reasonable efforts to obtain all necessary consents, approvals and authorizations of all other entities, in the case of each of the foregoing clauses (i), (ii) and (iii), necessary or advisable to consummate the transactions contemplated by this Agreement. The Buyer shall have the right to review and approve in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing, press release or public announcement made in connection with the transactions contemplated hereby.

## **ARTICLE 23.**

## **CONFIDENTIALITY**

Neither Seller nor the Buyer shall provide copies of [BIDDERS: Insert sections] or disclose the contents thereof (the “Confidential Terms”) to any third party without the prior written consent of the other Party; provided, however, that either Party may provide a copy of the Confidential Terms, in whole or in part to (1) any regulatory agency requesting and/or requiring such Confidential Terms, provided that any such disclosure must include a request for confidential treatment of the Confidential Terms, and (2) an Affiliate if related to the Party’s performance of its obligations hereunder, provided that such Affiliate agrees to treat the Confidential Terms as confidential in accordance with this clause.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

BY:

Its

[COMPANY]

BY:

Its\_\_\_\_\_

APPENDIX A  
Service Requirements Matrix  
By Service Requirement, Load Asset Name and ID, Load Responsibility, and  
Applicable Period

**Fitchburg Gas and Electric Light Company as Buyer**

Service Requirement	Load Asset Name and ID	Load Responsibility	Schedule 1	Schedule 2
50% FG&E Small Customer Group	FGE Default Service Small Load, 1737	50%	June 1, 2006	May 31, 2007
50% FG&E Medium Customer Group	FGE Default Service Med Load, 10693	50%	June 1, 2006	May 31, 2007
100% FG&E Large Customer Group	FGE Default Service Large Load, 1095	100%	June 1, 2006	August 31, 2006

APPENDIX B  
Monthly Contract Rate by Service Requirement  
Dollars per MWh

*[provisional]* Beginning October 2006 and continuing through the entire term listed below for each Service Requirement, unless amended pursuant to Section 5.1(c), the monthly prices presented in this Appendix B, shall exclude all costs associated with meeting the capacity requirements associated with each Service Requirement. The payment due from Buyer to Seller for the provision of capacity during such term for each Service Requirement shall be calculated in accordance with Section 5.1(b) of this Agreement. *[This language will be deleted if final bids that include the cost of capacity beginning October 2006 are accepted.]*

Service Requirement	Asset ID	June 2006	July 2006	August 2006
FGE DEFAULT SERVICE LARGE LOAD	1095			

Service Requirement	June 2006	July 2006	August 2006	September 2006	October 2006	November 2006
50% FGE Small Customer Group (12 months) Asset ID 1737						
	December 2006	January 2007	February 2007	March 2007	April 2007	May 2007

Service Requirement	June 2006	July 2006	August 2006	September 2006	October 2006	November 2006
50% FGE Medium Customer Group (12 months) Asset ID 10693						
	December 2006	January 2007	February 2007	March 2007	April 2007	May 2007

**Appendix C:           Current Default Service Tariff, Effective 03-01-2006**

See file named “App\_C\_DS\_Tariff\_2006-03.pdf”